IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7313 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgment? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

HIRALAL NAINAJEE PAHADIYA

Versus

STATE OF GUJARAT

Appearance: M/S THAKKAR ASSOC. for the Petitioner.
Ms.Archana Raval, Assistant GOVERNMENT PLEADER,
for Respondent No. 1-3
RULE SERVED for Respondent No. 1-2
Ms.Davawala, for respondent No.4-Union of India.

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 11/08/2004

ORAL JUDGEMENT

By filing this petition, the petitioner-detenu has challenged his detention order dated 27.4.2004, by which he is detained as a 'black-marketeer' under the provisions of the Prevention of Black Marketing & Maintenance of Supplies of Essential Commodities Act, 1980 ("PBM", for short). Along with the detention order, the petitioner is also served with the grounds of detention. In the grounds of detention, there is a reference about the alleged activities of the petitioner. It is alleged that he is mixing Naphtha in petrol. It is

alleged that the detenu is purchasing solvent Naphtha from tanker drivers and, thereafter, he is selling the same again by charging more price. The Authority, thereafter, after having been satisfied about such activity of the petitioner, has detained him under PBM in order to see that the petitioner is not tempted to repeat such type of illegalities. It is the aforesaid order, which is impugned in this petition.

The learned Advocate for the petitioner submitted that in connection with the said case, the petitioner was arrested by the Police and he was already released on bail on 24.4.2004. A copy of the said bail order is also produced by the petitioner in the compilation. It is submitted that the Sponsoring Authority has not placed the aforesaid order before the Detaining Authority, by which the petitioner was granted bail and, according to the learned Advocate for the petitioner, since favourable material has not been placed before the detaining authority, the detention can be said to have been vitiated.

It is submitted by Mr.Pahwa, learned Advocate for the petitioner, that the bail order was granted on 24.4.2004 and the detention order was passed on 27.4.2004; yet, there is no reference about such bail order in the detention order.

Ms.Archana Raval, learned AGP, on the other hand, submitted that the Sponsoring Authority forwarded the said order to the Detaining Authority on 26.4.2004. She, however, submitted that perhaps, it might not have reached the Detaining Authority and that may be the reason that there is no reference about the said bail order. However, it is required to be noted that this averment has not been specifically dealt with in the affidavit-in-reply. It is also required to be noted that this very Sponsoring Authority is also the Prosecuting Authority and, therefore, when the Sponsoring Authority was aware about the bail order, it was the duty of the Sponsoring Authority to see that before the detention order was passed, at least, that document was made available to the detaining authority. At the relevant time when the order was passed, either the detaining authority was not aware about the said bail order or such order was not placed before him at the time when the order was passed, and, therefore, only on the aforesaid ground, this petition is required to be allowed.

Mr.Pahwa has relied upon the decision of the Apex Court in M. Ahamedkutty v. Union of India and another,

(1990) 2 SCC 1 in order to substantiate his say that the bail application and the order passed below such application are vital documents. Mr.Pahwa submitted that even while granting bail, the Magistrate has imposed strict conditions and one of the conditions is that the petitioner-detenu shall not repeat such incident. He submitted that, therefore, if the material was placed before the detaining authority, the detaining authority might not have passed the detention order because the bail order contained the conditions subject to which the petitioner was granted the bail and on committing breach of such conditions, even the bail can be cancelled. At least, the conditions attached to the bail order were required to be taken into account by the detaining authority, but since the order was never placed before the detaining authority by the sponsoring authority, only on the limited ground of not placing the important document before the Detaining authority, the petition is required to be allowed. In a given case, it may not be necessary to supply documents, but, in the instant case, since the Magistrate has imposed certain conditions at the time of releasing the petitioner on bail, it was necessary on the part of the Sponsoring Authority to place this material before the detaining authority.

Considering the aforesaid aspect of the matter, the petition is accordingly allowed on the ground that the relevant material, which can be said to be a vital material, was not placed before the detaining authority, because some conditions were attached in the order passed by the Magistrate granting bail and if there is a breach of such conditions, even the bail can be cancelled.

The petition is accordingly allowed. The order of detention is quashed and set aside. It is ordered that the detenu be released forthwith unless he is required in connection with any other case. The Rule is made absolute accordingly.

11th August, 2004 (P.B. Majmudar, J.)

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(apj)